

LABOR STANDARDS FILE CHECKLIST

For each construction contract, the grantee should maintain a labor standards file to include the following items. These items should be available for review when the project is completed and a CDBG staff person comes to monitor the project.

- _____ Wage decision/Additional wage classifications
- _____ Proof of publication/advertisement for bid
- _____ Labor standards provisions statement included in bid advertisements
- _____ Evidence that the HUD 4010 form was included in the specifications and/or contract
- _____ Bid tabulation form
- _____ Verification of contractor eligibility
- _____ Contract Award Letter/Notice to Proceed Letter
- _____ Copy of pre-construction conference minutes (date, time, place and attendees)
- _____ Copy of construction contract with federal labor standards attachments
(Form 4010 and Wage decision)
- _____ Evidence that the Davis Bacon Wage decision was posted at the construction site
- _____ Certified payrolls - General Contractor's weekly payroll sheets (numbered #1, #2, etc.)
- _____ Certified payrolls – Sub-contractor(s) weekly payroll sheets (numbered #1, #2, etc.)
- _____ Hud-11's - employee interview sheets. (checked against wage decision)
- _____ Documentation on all compliance and enforcement actions
- _____ Date of construction completion.
- _____ Evidence of close-out, including final inspection by the state and no outstanding unpaid billings

SECTION H – LABOR

1. OVERVIEW

This section provides an overview of federal laws that govern the wages and working conditions for laborers and mechanics employed under construction contracts funded in whole or in part by CDBG funds.

Contracts for construction, alteration or rehabilitation of public works projects, public facilities, and some housing projects are governed by laws designed to ensure that:

- A. All contractors pay laborers and mechanics at a rate equal to that paid to those workers on similar activities in the locality. This is known as the "prevailing wage rate,"
- B. Workers will be paid at regularly scheduled intervals and only those deductions allowable by law or as authorized by the employee shall be taken out of the worker's gross pay,
- C. All workers receive "overtime" compensation at a rate of one and a half (1.5) times the regular hourly wage for work performed in excess of forty (40) hours per week, and
- D. All workers are assured safe and healthy working conditions.

2. APPLICABLE LAWS

A. Davis-Bacon and Related Acts (40 USC 276a-7)

The objective is to ensure that laborers and mechanics employed in construction work under federal contracts and contracts of recipients of federal financial assistance are paid wage rates and fringe benefits equal to those of corresponding classes of workers on similar construction in the locality in which the work is performed.

The key provisions apply to all contracts or subcontracts, which exceed \$2,000 for construction, alteration, or rehabilitation. The Division of Housing & Community Development will provide the wage rate determinations for all projects. Only apprentices approved by the U.S. Department of Labor are allowed to be paid less than the Davis Bacon Wage.

Housing rehabilitation of less than eight units or where less than eight units were bid as a single contract is excluded from Davis-Bacon provisions.

Additional guidance can be found under "Labor Standards Provisions Applicable to Contracts Covering Federally-financed and Assisted Construction" (29 CFR 5).

B. Copeland "Anti-Kickback" Act (40 USC 276 (c))

The objective is to prohibit wage "kickbacks" and salary deductions other than those prescribed by law (e.g., tax withholding and FICA) or those voluntarily authorized by the wage earner.

These provisions are applicable to any federally assisted contract subject to Davis-Bacon standards.

Additional guidance can be found under "Contractors and Subcontractors on Public Buildings or Public Work Financed in Whole or in Part by Loans or Grants from the United States" (29 CFR 3)

C. Contract Work Hours and Safety Standards Act, as Amended (40 USC 327-332)

The objective is to ensure that workers on federally assisted construction projects are compensated for overtime and to ensure that safe and healthy working conditions are provided.

The key provisions apply to all construction contracts over \$2,000. Financial assistance that is in the form of a loan guarantee or loan insurance is exempt from this requirement.

3. EXEMPTIONS FROM LABOR STANDARDS

A jurisdiction is exempt from Labor Standards Provisions when:

- A. A lowest responsible bidder has not been found after two successive bid solicitations resulting in no bids being within 10% of the engineers estimate, and it decides to use the jurisdiction's own employees to do the work (FORCE ACCOUNT LABOR); or
- B. A lowest responsible bidder has not been found after two successive bid solicitations, and it decides to use donated or volunteer labor drawn from among the jurisdiction's citizenry.

When volunteer labor is to be used and prior to commencement of construction, the jurisdiction must submit to State CDBG Staff the names of all volunteers; the type of work each will perform, i.e., carpenter, cement mason, brick mason, laborer, etc.; and the number of hours each will contribute to the project; and a schedule of when each volunteer will be working on the project and the length of time the person will be on the job site.

- C. The eligible activity is single-family housing rehabilitation or multi-family housing rehabilitation involving less than 8 units.

4. WAGE RATE DECISION

Request Wage Rate Determination -- Jurisdictions carrying out a construction project must contact State CDBG staff and request the most recent Davis Bacon Wage determination prior to soliciting bids for the project. Advertisements for bid must include language that the project is subject to Federal Labor Standards, Davis-Bacon Provisions, Section 3 and EEO requirements. This General Decision must become part of the project specifications and the contract between the jurisdiction and the general contractor. Bid advertisement is not required if a building improvement project is to be less than \$49,000 or a public infrastructure improvement will be less than \$157,000. Please review the procurement section of this handbook for complete procurement guidance.

5. GENERAL CONTRACTOR ELIGIBILITY DETERMINATION

Prior to awarding any construction contract, **the grantee must contact the state CDBG staff** and request approval of the proposed contractor. The U.S. Department of Labor maintains lists of contractors who have been found in violation of the labor standards requirements and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. The CDBG staff will check the U.S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Program's".

If the selected bidder is determined to be eligible, the state CDBG office will provide the grantee with a notice to proceed/contractor eligibility letter (**Exhibit H-2**). If the selected bidder appears on the list of ineligible contractors, the CDBG office will provide a notice of ineligibility. At that point the grantee may offer the contract to the first alternate bidder or may reopen the bidding procedures.

6. FORM 4010 – Exhibit H-3

Include all labor standards provisions and certifications in the solicitations for bid documents -- The governing regulations for the applicable laws related to labor standards provides specific language to be included in all solicitations for bids and contracts for projects receiving federal financial assistance. Additionally, each bidder and eventual contractor are required to provide specific certifications assuring the Grantee that the bidder and/or contractor will comply with prescribed labor standards requirements. These federal labor standards, federal form 4010, must be included in the contract and/or bid specifications. **This form is to become a part of all construction contracts.** The liability then falls on the contractor to comply with the labor standards. The grantees' responsibility is then reduced to interviews and record-keeping.

7. PRE-CONSTRUCTION CONFERENCE

Following the contract award but prior to giving notice to proceed to the contractor, the Grantee must hold a pre-construction conference, and **a member of the state CDBG staff must be asked to attend.** The main goal is to help the contractor and subcontractors understand the following:

- How payments are made to the grantee (RFF Schedule and required documentation).
- How to avoid payroll reporting problems and wage restitution.
- Who is responsible for resolving wage rate discrepancies?
- How to determine a wage for a trade not listed on the Davis Bacon Wage Decision.
- How to compute the value of any fringe benefits package paid by contractors.
- The Department of Labor posters that must be posted on the job site and where they are posted.

8. WEEKLY PAYROLL REPORTING

Proper submittal of weekly payrolls is the **most important requirement** of the CDBG program. The proper payroll format is provided in the Labor Exhibits section of this handbook. (H- 5) A computerized payroll form can be used instead provided that it contains the same information. Most importantly, all payroll forms must be **signed** and submitted to the grantee **each week!** For permissible payroll deductions see **Exhibit H-6**. It is not necessary to send the payrolls to the State for review. A CDBG staff person will review these during the monitoring visit.

CORRECTING PAYROLL ERRORS

The project manager (grantee) will notify the contractor by phone or letter if an error is found in the payroll. Adjustments should be made as follows:

- If the gross amount of wages due a workman does not exceed \$10.00, the contractor must pay the money directly to the employee and report the payment on supplemental payroll.
- If the gross amount exceeds \$10.00, then a certified statement from employee showing payment was received or a canceled check with the employees' endorsement must be provided to the project manager.

9. MONITORING CONTRACTOR PERFORMANCE

It is the grantee's responsibility to monitor construction contracts to ensure that all required notices are posted prominently at the construction site, that the contractor's weekly wage reports are accurate, and that the contractor is complying with applicable labor standards. While the general contractor is responsible for his sub-contractors, the grantee is ultimately responsible for monitoring of Davis Bacon requirements. This monitoring function can be accomplished through the following activities:

- On-site inspections to ensure that required notices are posted.
- Comparison of weekly payroll reports to the Davis Bacon Wage Decision.
- Interviews with construction employees.

Interviews should be conducted at least once a month with all the laborers on the job and at least ten percent of the remaining job classifications (backhoe operator, painter, cement mason, etc.).

Violations of labor standards requirements may surface as the result of either monitoring by the grantee or through a specific complaint by a construction worker. In either instance, the grantee is responsible for investigating and documenting the alleged violation.

If a violation is evident, the grantee may work with the contractor on an informal basis to resolve the finding. When the contractor refuses to address the violation or continues to violate the labor standards provision, the grantee should report the violations to the state CDBG staff. The state office then will work with the regional office of the U.S. Department of Labor to determine what actions are required. (The contractor should be informed that an unresolved finding could result in disbarment and make the contractor ineligible for further CDBG or other federally assisted construction projects.)

THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY